IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.MC.No. 595 of 2007()

SC.2059/2004 of ADDL. SESSIONS COURT (ADHOC)-II, TRIVANDRUM

.....

PETITIONERS: ACCUSED 2 TO 5, 7 & 8

---

1. ANIL @ THAMBAN,
ALUNKAL VEEDU, SWARAJKARA, AYYAPPANKOVIL VILLAGE,
UDUMBANCHOLA, IDUKKI DISTRICT.

2. HARILAL @ LAL,
VADAKKETHIL VEEDU, AKKULAM,
CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.

3. AJITHKUMAR,
SHAJI NIVAS, NEERAZHI LANE, ULLOOR,
CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.

4. CHANDRAN,
CHURANGIVILA VEEDU, PRASANTH NAGAR,
CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.

5. UNNIKRISHNAN NAIR,
KEEZHMANA VEEDU, MILMA JUNCTION,
AMBALAPUZHA TALUK, ALAPPUZHA.

6. BABU,
PUTHENVILA VEEDU, PULAYANARKOTTA,
CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.595 of 2007

Dated this the 5th day of March, 2007

ORDER

Petitioners are co-accused. Along with principal accused, they face allegations, inter alia, under Sections 376 and 366 read with 34 I.P.C. The crux of the allegations is that all the accused in furtherance of their common intention had committed the offences alleged. When the girl was below the age of 16 years, the principal accused Is alleged to have committed a statutory offence of rape on her. Thereafter also, it is alleged that the principal accused has committed the offence of rape against the victim minor girl. She was allegedly kidnapped on 25.05.2002 on which date, she was concededly below the age of 18 years. The petitioners contend that they have been arrayed as accused unnecessarily. They even allegedly had nothing to do with the offence of rape between the dates of 10.04.02 and 18.04.02, during which period alone the girl was below the age of consent. They further contend that though they are alleged to have helped the 1st accused in keeping the kidnapped girl in custody, they had no role to play even allegedly of the actual kidnapping which commenced on 25.05.2002. It is, in these circumstances, prayed that powers under Section 482 Cr.P.C may be invoked and the proceedings against the petitioners may be quashed.

2. I am unable to accept the request. I must alertly remind myself of the nature, quality and contours of the jurisdiction available to this Court under Section 482 Cr.P.C. This is an extraordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course. In every case, where discharge/acquittal is a possibility, that circumstance by itself cannot persuade this Court to invoke such powers under Section 482 Cr.P.C. Ordinarily and normally persons entitled for discharge/acquittal must claim such relief in accordance with the provisions of the Code at the appropriate stage from the appropriate Court. In a proceedings under Section 482 Cr.P.C, the crucial consideration is whether there is such gross abuse of process of the Court or failure/miscarriage of justice which should persuade this Court to short circuit the ordinary procedure prescribed by the law and bring to premature termination the proceedings initiated against the petitioners. After having anxiously considered all the relevant inputs, I am satisfied that this is not a fit case, where such extra ordinary jurisdiction can, ought or deserves to be invoked. I am satisfied that this is a fit case, where the petitioner must claim discharge/acquittal from the appropriate court on the appropriate stage.

3. This Crl.M.C is, in these circumstances, dismissed, but I may hasten to observe that the dismissal of this Crl.M.C will not in

any way fetter the rights of the petitioners to raise all appropriate and relevant contentions before the appropriate court and urge their plea of discharge/acquittal.

(R.BASANT, JUDGE)

rtr/-